**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.**

**JUDGMENT**

The New India Assurance Co. Ltd. **Vs.** Smt. Laxmi Devi & Ors.

**D.B. Civil Special Appeal No. 7/2002**
**in**
**S.B. Civil Misc. Appeal No. 1225/2000**

Date of order :: July 5, 2007

**PRESENT**
**HON'BLE MR.JUSTICE R.C. GANDHI.**
**HON'BLE DR. JUSTICE VINEET KOTHARI**

Mr. Virendra Agarwal for the appellant
None present for the respondents

**(ORAL, Per Hon'ble Mr. Gandhi, J.)**

1. This second appeal has been preferred against the order dated 12.12.2001 passed by the learned Single Judge in Civil Misc. appeal No. 1225/2000 arising out of the claim petition No. 101/1995 passed by the Motor Accidents Claims Tribunal, Bharatpur (for short, 'MACT' hereinafter).

2. Against the award of the MACT, an appeal was preferred before the learned Single Judge challenging the quantum of award. The

other side took an objection that the quantum of award cannot be challenged by the Insurance Company unless such permission has been granted to it by the MACT. The misc. appeal came to be dismissed by the learned Single Judge.

3. Aggrieved of the dismissal of the first appeal vide the order under appeal, this second appeal has been preferred on the same set of grounds. This issue is no more res integra and has been decided by the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs. Nicolletta Rohtagi & Ors.* reported in (2002) ACJ 1950 observing as under :-

> "31. *We have already held that unless the conditions precedent specified in section 170 of 1988 Act are satisfied, an insurance company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim and, further, the Tribunal does not implead the insurance company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the grounds available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if a aggrieved. In any case, where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing an appeal on grounds specified in sub-section (2) of Section*

*149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer res integra that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.*

*32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle."*

4. In view of law as referred above, we do not find any merit in the appeal and the same is dismissed accordingly.

**(Dr.VINEET KOTHARI),J.** **(R.C. GANDHI),J.**

**Pramod**